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FIRST DIVISION

[G.R. No. 173349. February 9, 2011]

SAMUEL U. LEE and PAULINE LEE and ASIATRUST DEVELOPMENT BANK, INC., *petitioners, vs.* **BANGKOK BANK PUBLIC COMPANY, LIMITED,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; SECURITIES AND EXCHANGE COMMISSION (SEC); APPLICABLE SEC LAWS IN CASE AT BAR.— At the outset, it must be noted that at the time the Consolidated Petition for the Declaration of a State of Suspension of Payments and for Appointment of a Management Committee/Rehabilitation Receiver was filed before the SEC on February 16, 1998 by MDEC, MHI, and three other corporations owned by the Lee family, *Batas Pambansa Blg.* (BP) 178 or the then Revised Securities Act was the primary governing law along with Presidential Decree No. (PD) 902-A, as amended, and the Corporation Code of the Philippines. Pertinently, among others, the SEC was also covered by the Investment House Law (PD 129), the Financing Company Act under Republic Act. No. (RA) 2626, the Foreign Investments Act (RA 7042), and the Liberalized Foreign Investments Act (RA 8179). And subsequent to the filing of the instant case, the Securitization Act of 2004 (RA 9267) and the Lending Company Regularization Act of 2007 (RA 9474) were also enacted. PD 902-A, however, was further amended by RA 8799 or the Securities Regulation Code, approved on July 19, 2000 by President Joseph Estrada. Under Sec. 5.2 of RA 8799, the SEC's original and exclusive jurisdiction over all cases enumerated under Sec. 5 of PD 902-A was transferred to the appropriate RTC. RA 8799, Sec. 5.2, however, expressly stated as an exception, that the "**[t]he Commission shall retain jurisdiction over pending suspension of payment/ rehabilitation cases filed as of 30 June 2000 until finally disposed**." Accordingly, the Consolidated Petition for the Declaration of a State of Suspension of Payments and for

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Appointment of a Management Committee/Rehabilitation Receiver filed on February 16, 1998 by MDEC, MHI and three other corporations owned by the Lee family, remained under the jurisdiction of the SEC until finally disposed of pursuant to the last sentence of Sec. 5.2 of RA 8799.

2. ID.; ID.; PD 902-A; VESTED THE SEC WITH JURISDICTION ON PETITIONS FOR SUSPENSION OF PAYMENTS ONLY ON CORPORATIONS, PARTNERSHIPS, ASSOCIATIONS AND NOT ON PRIVATE INDIVIDUALS.— The SEC's jurisdiction is evident from the statutorily vested power of jurisdiction, supervision and control by the SEC over all corporations, partnerships or associations, which are grantees of primary franchise, license or permit issued by the government to operate in the Philippines, and its then original and exclusive jurisdiction over petitions for suspension of payments of said entities. x x x It can be clearly gleaned from Secs. 3 and 5 of PD 902-A that in cases of petitions for the suspension of payments, the SEC has jurisdiction over corporations, partnerships and associations, which are grantees of primary franchise or license or permit issued by the government to operate in the Philippines, and their properties. And it is indubitably clear from the aforequoted Sec. 5(d) that only **corporations, partnerships and associations**—NOT private individuals—can file with the SEC, petitions for declaration in a state of suspension of payments. Thus, it logically follows that the SEC does not have jurisdiction to entertain petitions for suspension of payments filed by parties other than **corporations, partnerships or associations**. Indeed, settled is the rule that it is axiomatic that jurisdiction is the authority to hear and determine a cause, which is conferred by law and not by the policy of any court or agency.

3. ID.; ID.; ID.; PRIVATE INDIVIDUALS AND THEIR PRIVATELY OWNED PROPERTIES CANNOT BE PLACED UNDER THE JURISDICTION OF THE SEC IN A PETITION FOR SUSPENSION OF PAYMENTS.— In *Chung Ka Bio v. Intermediate Appellate Court*, this Court resolved in the negative the issue of whether private individuals can file with the SEC petitions for declaration in a state of suspension of payments. We held that Sec. 5(d) of PD 902-A clearly does not allow a mere individual to file the petition, which is limited

to "corporations, partnerships or associations." Besides, We pointed out that the SEC, being a mere administrative agency, is a tribunal of limited jurisdiction and, as such, can only exercise those powers, which are specifically granted to them by their enabling statutes. We, thus, concluded that where no authority is granted to hear petitions of individuals for suspension of payments, such petitions are beyond the competence of the SEC. In short, the SEC has no jurisdiction over private individuals relative to any petition for suspension of payments, whether the private individual is a petitioner or a co-petitioner. We have said time and again that the SEC's "jurisdiction is limited only to corporations and corporate assets"; it has no jurisdiction over the properties of private individuals or natural persons, even if they are the corporation's officers or sureties. We have, thus, consistently applied this ruling to the subsequent *Ong v. Philippine Commercial International Bank*, *Modern Paper Products, Inc. v. Court of Appeals*, and *Union Bank of the Philippines v. Court of Appeals*. Here, it is undisputed that the petition for suspension of payments was collectively filed by the five corporations owned by the Lee family. It is likewise undisputed that together with the consolidated petition is a list of properties, which included the subject Antipolo properties owned by Samuel and Pauline Lee. The fact, however, that the subject properties were included in the list submitted to the SEC does not confer jurisdiction on the SEC over such properties. It is apparent that even if the members of the Lee family are joined as co-petitioners with the five corporations, still, this could not confer jurisdiction on the SEC over the Lee family members—as private individuals—nor could this affect their privately owned properties. Further, the fact that the debts of MDEC and MHI to Bangkok Bank are secured by the Lee family through the guarantees will not likewise put the Lee family and their privately owned properties under the jurisdiction of the SEC through the consolidated petition for suspension of payments. Therefore, the February 20, 1998 Suspension Order issued by the SEC did not and could not have included the subject properties. The RTC correctly grasped this point that the disposition of the subject properties did not violate the suspension order.

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4. CIVIL LAW; CONTRACTS; THE PRESUMPTION OF FRAUD UNDER ARTICLE 1381 (3) OF THE CIVIL CODE, DOES NOT APPLY IN CASE AT BAR.— Under Art. 1381(3) of the Civil Code, contracts, which were "undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them," are rescissible. Art. 1387 of the Code states when an act is presumed to be fraudulent. x x x It is with regard to the foregoing provisions that the CA anchored its ruling of the existence of a presumption of fraud in the instant case. This presumption, however, finds no application to this case. The presumption of fraud established under Art. 1387 does not apply to registered lands IF "the **judgment or attachment** made is not also registered." In *Abaya v. Enriquez*, Abaya was able to obtain a judgment against Enriquez for a sum of money, and the judgment was partially unsatisfied after Enriquez made a partial payment. The judgment and the writ of execution, however, was never annotated on the titles of the registered lands owned by Enriquez. Subsequently, Enriquez sold the said lands. In an action for rescission instituted by Abaya, the Court ruled that the presumption of fraud does not apply as the judgment and the attachment have not been registered and annotated on the title. The Court held: Where the judgment rendered against the defendant x x x has not been entered in the records of the register of deeds, relative to an immovable belonging to the judgment debtor, the subsequent sale of said property by the latter, shall not be rescinded upon the ground of fraud, unless the complicity of the buyer in the fraud imputed to said vendor is established by other means than the presumption of fraud x x x. In this case, prior to the annotation of the REM on February 23, 1998, SBC was able to successfully acquire a writ of preliminary attachment in its favor against the spouses Lee on January 30, 1998 in a case for a sum of money for nonpayment of its obligation. Bangkok Bank alleges that because of this, the presumption of fraud under Art. 1387 of the Civil Code applies. But while a judgment was made against the spouses Lee in favor of SBC on January 30, 1998, this, however, was not annotated on the titles of the subject properties. In fact, there is no showing that the judgment has ever been annotated on the titles of the subject properties. As established in the facts, there were only two annotations at the back of the titles of the Antipolo properties: *first*, the REM

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executed in favor of Asiatrust on February 23, 1998; and *second*, the writ of preliminary attachment in favor of Bangkok Bank on March 18, 1998. Considering that the earlier SBC judgment or attachment was not, and in fact never was, annotated on the titles of the subject Antipolo properties, prior to the execution of the REM, the presumption of fraud under Art. 1387 of the Code clearly cannot apply.

5. ID.; ID.; EVEN ASSUMING THAT ARTICLE 1387 OF THE CIVIL CODE APPLIES, THE EXECUTION OF A MORTGAGE IS NOT CONTEMPLATED WITHIN THE MEANING OF ALIENATION BY ONEROUS TITLE UNDER SAID PROVISION.— Under Art. 1387 of the Code, fraud is presumed only in **alienations** by onerous title of a person against whom a judgment or attachment has been issued. The term, alienation, connotes the "transfer of the property and possession of lands, tenements, or other things, from one person to another." This term is "particularly applied to **absolute conveyances** of real property" and must involve a "complete transfer from one person to another." A mortgage does not contemplate a transfer or an absolute conveyance of a real property. It is "an interest in land created by a written instrument providing security for the performance of a duty or the payment of a debt." When a debtor mortgages his property, he "merely subjects it to a **lien** but **ownership thereof is not parted with**." It is merely a lien that neither creates a title nor an estate. It is, therefore, certainly not the alienation by onerous title that is contemplated in Art. 1387 where fraud is to be presumed. In this very action, Bangkok Bank claims that when the spouses Lee executed the REM in favor of Asiatrust, the presumption of fraud under Art. 1387 became applicable. We hold in the negative. As We have plainly discussed, a mortgage is not that which is contemplated in the term "**alienation**" that would make the presumption of fraud under Art. 1387 apply. It requires a full and absolute conveyance or transfer of property from one person to another, such as that in the form of a sale. As elucidated earlier, a mortgage merely creates a lien on the property that would afford the mortgagee/creditor greater security in the obligation of the mortgagor/debtor. This being so, as the REM is not the alienation contemplated in Art. 1387 of the Code, the presumption of fraud cannot apply.

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6. ID.; ID.; THE APPLICATION OF THE PRESUMPTION OF FRAUD UNDER ARTICLE 1387, IF APPLICABLE, COULD ONLY BE MADE TO APPLY TO PETITIONERS-SPOUSES AS THE PERSON AGAINST WHOM A JUDGMENT OR WRIT OF ATTACHMENT HAS BEEN ISSUED.— A careful reading of Art. 1387 of the Code *vis-à-vis* its Art. 1385 would plainly show that the presumption of fraud in case of alienations by onerous title only applies to the person who made such alienation, and against whom some judgment has been rendered in any instance or some writ of attachment has been issued. A third person is not and should not be automatically presumed to be in fraud or in collusion with the judgment debtor. In allowing rescission in case of an alienation by onerous title, the third person who received the property conveyed should likewise be a party to the fraud. As clarified by Art. 1385(2) of the Code, so long as the person who is in legal possession of the property did not act in bad faith, rescission cannot take place. Thus, in all instances, as to the third person in legal possession of the questioned property, good faith is presumed. Accordingly, it is upon the person who alleges bad faith or fraud that rests the burden of proof. Asiatrust, being a third person in good faith, should not be automatically presumed to have acted fraudulently by the mere execution of the REM over the subject Antipolo properties, there being no evidence of fraud or bad faith. Regrettably, in ratiocinating that fraud was committed by both the spouses Lee and Asiatrust, the CA merely anchored its holding on the presumption espoused under Art. 1387 of the Code, nothing more.

7. ID.; ID.; ALLEGED FRAUD NOT PROVED AND SUBSTANTIATED.— No deception could have been used by the spouses Lee in including in the list of properties, which they submitted to the SEC, the subject Antipolo properties. *First*, it is undisputed that the list of properties submitted by the Lee corporations to the SEC clearly indicated that the subject Antipolo properties have already been earmarked, or have already been serving as security, for its loan obligations with Asiatrust. *Second*, MDEC, through its counsel, truly believed in good faith that the inclusion of the spouses Lee's private properties in the list submitted to the SEC is valid and regular. As can be seen in the letter sent by the counsel of the Midas

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Group of Companies to the Office of the Clerk of Court and *Ex-Officio* Sheriff of the Antipolo RTC on April 4, 1998, at the time when the subject Antipolo properties were being foreclosed by Asiatrust, its counsel vigorously countered the actions of Asiatrust and stated that the subject Antipolo properties cannot be foreclosed pursuant to the SEC Suspension Order. And as discussed *infra*, the alleged collusion between the spouses Lee and Asiatrust appears to be a mere figment of imagination.

8. ID.; ID.; HASTE ALONE IN THE FORECLOSURE OF THE MORTGAGE DOES NOT CONSTITUTE EXISTENCE OF FRAUD; THE TOTALITY OF CIRCUMSTANCES CLEARLY MANIFESTS THE WANT OF FRAUD AND BAD FAITH ON THE PART OF THE PARTIES TO THE REAL ESTATE MORTGAGE IN QUESTION.— Contracts in fraud of creditors are those executed with the **intention** to prejudice the rights of creditors. They should not be confused with those entered into without such mal-intent, even if, as a direct consequence, a creditor may suffer some damage. More so it is, when the allegation involves not only fraud on the part of the debtor, but also that of another creditor. In determining whether or not a certain conveying contract is fraudulent, what comes to mind first is the question of whether the conveyance was a *bona fide* transaction or a trick and contrivance to defeat creditors. Haste alone in the foreclosure of the mortgage does not constitute the existence of fraud. Considering that the totality of circumstances clearly manifests the want of fraud and bad faith on the part of the parties to the REM in question, consequently, the REM cannot be rescinded.

9. ID.; ID.; NO COLLUSION BETWEEN PETITIONERS-SPOUSES AND THE BANK.— There was no collusion between the spouses Lee and Asiatrust. Besides the fact that individually, fraud was not sufficiently and convincingly established on the part of the spouses Lee and Asiatrust, Bangkok Bank's allegation of collusion between them was likewise unsubstantiated and therefore untenable. *First*, even after the subject Antipolo properties were foreclosed by Asiatrust, Asiatrust sought the recovery of the deficiency amounting to at least PhP 14,800,000. And until the filing of the memoranda by the parties before this Court, the said action

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remains pending before the CA. *Second*, Asiatrust filed a criminal case against Samuel for violation of BP 22. At the time of the filing of the petition for review, the case was still pending before the Metropolitan Trial Court of Quezon City. Later, at the time of the filing of the spouses Lee's Memorandum, it was indicated that it has already been dismissed. *Third*, contrary to the CA's appreciation of the facts, the letter sent by Atty. Macam, counsel of the Midas Group of Companies, actually strengthens the proof that no collusion existed between the parties. Acting on the interest of MDEC, Atty. Macam sent a letter to the Clerk of Court and the *Ex-Officio* Sheriff of the Antipolo RTC, arguing that the subject Antipolo properties cannot be foreclosed as they are the subject of an existing SEC Suspension Order. In fact, counsel for MDEC alleged that the foreclosure sale was illegal. On the other hand, when the *Ex-Officio* Sheriff presented a copy of the letter to Asiatrust and asked the latter to comment, Asiatrust categorically stated that the subject properties could not be made a subject of the SEC Suspension Order, they being properties of the spouses Lee, natural persons outside the jurisdiction of the SEC. In fact, it was Bangkok Bank's sole witness, Capalaran, who firmly agreed that, indeed, the subject properties are not covered by the Suspension Order that is why Bangkok Bank, too, filed an action against the spouses Lee on March 12, 1998 and sought the attachment of the said properties. With all the foregoing facts strongly established, We confirm the absence of fraud, bad faith, and collusion between the spouses Lee and Asiatrust.

10. ID.; ID.; THE REQUISITE GOOD FAITH ON THE PART OF THE THIRD PERSON AND FRAUD, NECESSARY FOR AN ACTION TO RESCIND UNDER ARTICLE 1381 OF THE CIVIL CODE, WERE NOT COMPLIED WITH.— In *Siguan v. Lim*, this Court held that in an action to rescind under Art. 1381, the following requisites must exist: The action to rescind contracts in fraud of creditors is known as *accion pauliana*. For this action to prosper, the following requisites must be present: (1) the plaintiff asking for rescission has a credit prior to the alienation, although demandable later; (2) the debtor has made a subsequent contract conveying a patrimonial benefit to a third person; (3) the creditor has no other legal remedy to satisfy his claim; **(4) the act being impugned is fraudulent;**

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(5) the third person who received the property conveyed, if it is by onerous title, has been an accomplice in the fraud. Considering the discussions previously expounded, the extant records show that the fourth and fifth requisites enumerated above are absent.

11. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS; REDEMPTION OF REAL PROPERTY SOLD; REDEMPTION PERIOD HAS ALREADY ELAPSED IN CASE AT BAR.— Under Sec. 27, Rule 39 of the Rules of Court, it is clear that Bangkok Bank, as an attaching creditor, has the right to redeem the subject Antipolo properties that were foreclosed by Asiatrust. In determining the period within which to redeem the foreclosed Antipolo properties in the present case, RA 337 or the *General Banking Act* finds application. Pertinently, its Sec. 78 states: **Sec. 78.** x x x In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan granted before the passage of this Act or under the provisions of this Act, the mortgagor or debtor whose real property has been sold at public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, banking, or credit institution, within the purview of this Act, shall have the right, **within one year after the sale of the real estate** as a result of the foreclosure of the respective mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, with interest thereon at the rate specified in the mortgage, and all the costs and other judicial expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property. However, the purchaser at the auction sale concerned shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. In this case, the auction sale took place on April 15, 1998 and was registered with the RD on April 21, 1998. Subsequently, on April 30, 1999, a date already and certainly beyond the one-year redemption period provided by law, new titles were issued in favor of Asiatrust. Apparently, Bangkok Bank chose not to exercise its right of redemption over the subject Antipolo

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properties. Even as a general rule, "[t]he period of redemption is not tolled by the filing of a complaint or petition for annulment of the mortgage and the foreclosure sale conducted pursuant to the said mortgage," Bangkok Bank, however, filed its action for rescission way beyond the expiration of the said redemption period on July 20, 1999. After the expiration of the redemption period, Asiatrust as purchaser, therefore, became the absolute owner of the subject properties, and whose rights necessarily include the right to be in the legal possession of the properties.

APPEARANCES OF COUNSEL

Carillo & Tantuan for Samuel U. Lee.
NC San Juan & Associates for Asiatrust Dev't. Bank., Inc.
Sycip Salazar Hernandez & Gatmaitan for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

In this Petition for Review on *Certiorari* under Rule 45, petitioners assail the March 15, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 79362, which reversed and set aside the April 21, 2003 Decision[2] of the Regional Trial Court (RTC), Branch 73 in Antipolo City, in Civil Case No. 99-5388, entitled *Bangkok Bank Public Company Limited v. Spouses Samuel U. Lee and Pauline Lee and Asiatrust Development Bank* for the Rescission of Real Estate Mortgage (REM), Annulment of Foreclosure Sale, Cancellation of Titles and Damages. They assail also the June 29, 2006 CA Resolution denying their motion for reconsideration.

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[1] *Rollo*, pp. 79-90. Penned by Associate Justice Eliezer R. De Los Santos and concurred in by Associate Justices Jose C. Reyes, Jr. and Arturo G. Tayag.

[2] *Id.* at 91-101. Penned by Judge Mauricio M. Rivera.

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The Facts

Midas Diversified Export Corporation (MDEC) and Manila Home Textile, Inc. (MHI) entered into two separate Credit Line Agreements (CLAs) with Respondent Bangkok Bank Public Company, Limited (Bangkok Bank) on November 29, 1995 and April 17, 1996, respectively.[3] MDEC and MHI are owned and controlled by the Lee family: Thelma U. Lee, Maybelle L. Lim, Daniel U. Lee and Samuel U. Lee (Samuel).[4] Both corporations have interlocking directors and management led by the Lee family; and engaged in the manufacturing and export of garments, ladies' bags and apparel.

Bangkok Bank required guarantees from the Lee family for the two CLAs. Consequently, the Lee family executed guarantees in favor of Bangkok Bank on December 1, 1995 for the CLA for MDEC and on April 17, 1996 for the CLA of MHI. Under the guarantees, the Lee family irrevocably and unconditionally guaranteed, as principal debtors, the payment of any and all indebtedness of MDEC and MHI with Bangkok Bank.[5] Prior to the granting of the CLAs, Bangkok Bank conducted a property check on the Lee family and required Samuel to submit a list of his properties. Bangkok Bank, however, did not require the setting aside, as collateral, of any particular property to answer for any future unpaid obligation.[6] Subsequently, MDEC and MHI made several availments from the CLAs. In time, the advances, which MDEC and MHI had taken out from the CLAs, amounted to three million dollars (USD 3,000,000).[7]

On July 25, 1996, MDEC was likewise granted a loan facility by Asiatrust Development Bank, Inc. (Asiatrust).[8] This facility had an available credit line of forty million pesos (PhP 40,000,000)

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[3] *Id.* at 10, 33.

[4] *Id.* at 91.

[5] *Id.* at 34.

[6] *Id.* at 96.

[7] *Id.* at 10, 33-34.

[8] *Id.* at 97-98.

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for letters of credit, advances on bills and export packing; and a separate credit line of two million dollars (USD 2,000,000) for bills purchase.[9]

In the meantime, in May 1997, Samuel bought several parcels of land in Cupang, Antipolo, and later entered into a joint venture with Louisville Realty and Development Corporation to develop the properties into a residential subdivision, called Louisville Subdivision.[10] These properties in Cupang, Antipolo are the subject properties in the instant case (Antipolo properties) and are covered by Transfer Certificate of Title (TCT) Nos. 329663 to 329511 of the Registry of Deeds of Rizal in Marikina City (RD).[11]

Throughout 1997, MDEC availed itself of the omnibus credit line granted by Asiatrust on three occasions: ten million pesos (PhP 10,000,000) to mature on July 15, 1997; eleven million pesos (PhP 11,000,000) to mature on February 6, 1998; and another ten million pesos (PhP 10,000,000) to mature on February 20, 1998. In the same year, particularly in August 1997, when MDEC had defaulted in the payment of its loan that matured on July 15, 1997, Asiatrust initiated negotiations with MDEC and required the Lee family to provide additional collateral that would secure the loan. In December 1997, the negotiation was concluded when Asiatrust had agreed to Samuel's proposition that he would mortgage the subject Antipolo properties to secure the loan, and therefore execute a REM over the properties.[12] While the titles of the Antipolo properties had been delivered by Samuel to Asiatrust and the REM had been executed in January 1998, spouses Samuel and Pauline Lee (spouses Lee) were requested to sign a new deed of mortgage on February 23, 1998, and, thus, it was only on that date that the said mortgage was actually notarized, registered, and annotated at the back of the titles.[13]

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[9] *Id.* at 97.

[10] *Id.* at 94.

[11] *Id.* at 93.

[12] *Id.* at 97.

[13] *Id.* at 92-93.

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Similarly, MDEC and MHI initially had made payments with their CLAs until they defaulted and incurred aggregate obligations to Bangkok Bank in the amount of USD 1,998,554.60 for MDEC and USD 800,000 for MHI.[14] Similarly, the Lee corporations defaulted in their obligations with other creditors. For example, Security Bank Corporation (SBC) filed a case against the Lee family for a sum of money resulting from the nonpayment of obligations before the RTC, Branch 132 in Makati City, entitled *Security Bank Corporation v. Duty Free Superstore, Inc., Daniel U. Lee, Samuel U. Lee and Jacqueline M. Lee*, docketed as Civil Case No. 98-196. On January 30, 1998, the RTC in Civil Case No. 98-196 issued a Writ of Preliminary Attachment in favor of SBC, granting attachment of the defendants' real and personal properties.[15] The writ, however, was neither registered nor annotated on the titles of the subject Antipolo properties at the RD.

On February 16, 1998, MDEC, MHI, and three other corporations owned by the Lee family filed before the Securities and Exchange Commission (SEC) a Consolidated Petition for the Declaration of a State of Suspension of Payments and for Appointment of a Management Committee/Rehabilitation Receiver.[16] Said petition acknowledged, among others, MDEC and MHI's indebtedness with Bangkok Bank, and admitted that matured and maturing obligations could not be met due to liquidity problems. The petition likewise had a list of creditors to whom the corporations remain indebted, which included Asiatrust.[17] The petition stated that the Lee family and their corporations had more than sufficient properties to cover all liabilities to their creditors; and presented a list of all their properties including the subject properties located in Antipolo, Rizal. Notably, the list of properties attached to the petition indicated that the subject Antipolo properties of the spouses Lee had already been

[14] *Id.* at 95.

[15] *Id.* at 80.

[16] *Id.* at 95.

[17] *Id.* at 81.

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earmarked, or that they had already served as security, for MDEC's unpaid obligation with Asiatrust.[18]

On February 20, 1998, the SEC issued a Suspension Order enjoining the Lee corporations from disposing of their property in any manner except in the ordinary course of business, and from making any payments outside the legitimate expenses of their business during the pendency of the petition.[19]

On March 12, 1998, Bangkok Bank instituted an action before the RTC, Branch 141 in Makati City to recover the loans extended to MDEC and MHI under the guarantees, docketed as Civil Case No. 98-628.[20] Bangkok Bank's application for the issuance of a writ of preliminary attachment was granted through the Orders dated March 17 and 18, 1998, covering the properties of the Lee family in Antipolo, Cavite, Quezon City, and Baguio, among others.[21]

While enforcing the writs of preliminary attachment, Bangkok Bank discovered that the spouses Lee had executed a REM over the subject Antipolo properties in favor of Asiatrust; and that the REM had previously been annotated on the titles.[22] Thus, the writs of preliminary attachment were also inscribed at the back of the TCTs covering the subject Antipolo properties, next to the annotation of the REM.

With MDEC still unable to make payments on its defaulting loans with Asiatrust, the latter foreclosed the subject mortgaged Antipolo properties. On April 15, 1998, Asiatrust won as the highest bidder at the auction sale, purchasing the said properties for PhP 20,864,735.[23] Thereafter, Asiatrust still filed an action against MDEC and the spouses Lee to collect the deficiency

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[18] *Id.* at 15, 94.

[19] *Id.* at 92.

[20] *Id.* at 36-37, 92.

[21] *Id.* at 37, 92, 96.

[22] *Id.* at 37, 92.

[23] *Id.* at 93.

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amounting to at least PhP 14,800,000. Up until the filing of the memoranda by the parties before this Court, the said action remained pending before the CA.[24]

Subsequently, the sale was registered on April 21, 1998.[25] Believing the REM and the foreclosure sale to be fraudulent, Bangkok Bank did not redeem the subject properties. As there had been no effort to redeem the properties, consequently, the TCTs covering the subject properties were consolidated in the name of Asiatrust on April 30, 1999, and 120 new titles were issued in the name of Asiatrust without the annotation of the writs of preliminary attachment, which were deemed canceled.[26]

Among the 120 titles foreclosed by Asiatrust in Louisville Subdivision in Antipolo, only 12 properties were sold for a maximum price of PhP 250,000 for a house and lot, and 108 titles remained. Asiatrust was still unable to sell them and convert them into cash. From then on, Asiatrust maintained security services and paid the real estate taxes of the subject Antipolo properties, among others.

On July 20, 1999, Bangkok Bank filed the instant case before the RTC, Branch 73 in Antipolo City, docketed as Civil Case No. 99-5388 for the rescission of the REM over the subject properties, annulment of the April 15, 1998 foreclosure sale, cancellation of the new TCTs issued in favor of Asiatrust, and damages amounting to PhP 600,000. In its action, Bangkok Bank alleged, among others, that the presumption of fraud under Article 1387 of the Civil Code applies, considering that a writ of preliminary attachment was issued in January 1998 in favor of SBC against Samuel. It also claimed that collusion and fraud transpired between the spouses Lee and Asiatrust in the execution of the REM. On August 5, 1999, Bangkok Bank amended its complaint to implead the RD.

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[24] In *Asiatrust Bank v. Midas Diversified Export Corporation, Samuel U. Lee, et al.*, CA-G.R. CV No. 80862, Memorandum for Spouses Lee, p. 11.

[25] *Rollo*, p. 93.

[26] *Id.* at 93, 96.

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Meanwhile, on March 23, 2000, the RTC, Branch 141 in Makati City in Civil Case No. 98-628 rendered a Partial Decision in favor of Bangkok Bank, ordering the Lee family, pursuant to the guarantees, to pay USD 1,998,554.60 for the CLA of MDEC and USD 800,000 for the CLA of MHI, with the corresponding 12% interest per annum from the date of the filing of the complaint, *i.e.*, on March 12, 1998, until fully paid.

But Bangkok Bank had only levied on the execution of the partial decision, some old equipment, office fixtures and furniture, garments, textiles, and other small production equipment with an approximate aggregate value of PhP 600,000.[27] Considering the total liabilities of the Lee family to Bangkok Bank, the levied properties were insufficient to satisfy the partial judgment in Civil Case No. 98-628.

The Ruling of the RTC

After due hearing with the parties presenting their evidence, on April 21, 2003, the RTC rendered a Decision dismissing the case, the *fallo* reading:

> WHEREFORE, premises considered, the instant case is hereby DISMISSED for lack of merit.
>
> No findings as to the counterclaim of the defendants for insufficiency of evidence to support the claim.
>
> SO ORDERED.[28]

In dismissing the instant case, the trial court found no concrete proof of the alleged fraud committed by the Lee family and Asiatrust, more so, that of a collusion or conspiracy between them. Consequently, it ruled that Art. 1381(3) of the Civil Code does not apply. Moreover, it noted that Bangkok Bank has not proved that it cannot in any manner collect its claims from the Lee family. For one, it held that Bangkok Bank chose not to exercise its right of redemption over the subject properties; for another, the subject properties were not the only properties of

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[27] *Id.* at 83.

[28] *Id.* at 101.

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the Lee family as admitted by Bangkok Bank's sole witness, Susan Capalaran.

The RTC explained that a mortgage contract is an onerous undertaking to secure payment of an obligation and cannot be considered as a gratuitous alienation; thus, Art. 1387 of the Civil Code does not apply.[29] Finally, it held that neither fraud nor a violation of the SEC suspension order can result from the execution of the REM and the foreclosure of the subject properties, because according to the testimony of Bangkok Bank's sole witness, the subject properties are not covered by the SEC Suspension Order for which reason Bangkok Bank filed an action to attach them. As the subject properties are not covered by the SEC Suspension Order, the RTC held that there is nothing that precludes the spouses Lee from mortgaging them to Asiatrust.[30]

The Ruling of the CA

Aggrieved, Bangkok Bank appealed the trial court's decision before the CA; and on March 15, 2006, the appellate court rendered the assailed decision, which granted the appeal, and reversed and set aside the RTC decision. The decretal portion reads:

> WHEREFORE, premises considered, the instant appeal is hereby GRANTED. The assailed Decision dated April 21, 2003 of the trial court is REVERSED and SET ASIDE. A new judgment is rendered ordering the:
>
> 1. Rescission of the Real Estate Mortgage over Appellees-spouses Lee's Antipolo properties in favor of appellee Asiatrust;
> 2. Annulment of the Foreclosure Sale conducted on April 15, 1998;
> 3. Cancellation of the Transfer Certificate of Titles in the name of Asiatrust; and
> 4. Reversion of the titles in favor of appellees-spouses Lee.

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[29] *Id.* at 100.

[30] *Id.* at 101.

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No costs.

SO ORDERED.[31]

In reversing and setting aside the RTC decision, the CA held as crucial the Letter dated April 4, 1998 sent by the counsel of the Midas Group of Companies to the Office of the Clerk of Court and *Ex-Officio* Sheriff of the trial court relative to the extra-judicial foreclosure of the REM scheduled on April 15, 1998. The letter assailed said proceeding as bereft of legal and factual bases in the light of the February 20, 1998 Suspension Order of the SEC.[32] It held that the present counsel of petitioner-spouses Lee cannot take a 360-degree turn as regards their predecessor's position, for Bangkok Bank merely adopted petitioners' earlier stance. Thus, the CA ruled that petitioner-spouses Lee are in estoppel *in pais*, under Art. 1431 of the Civil Code and Section 2(a) of Rule 131 of the Revised Rules on Evidence.

The CA found that the subject Antipolo properties, though personal assets of the spouses Lee, are covered by the February 20, 1998 Suspension Order of the SEC, since they are included in the list submitted to SEC by the Lee family; and that Samuel is a guarantor of the loans incurred by MDEC and MHI from Bangkok Bank. It ruled that Samuel, being a guarantor, is jointly and severally liable to Bangkok Bank for the corporate debts of MDEC and MHI, as he divested himself from the protection of the limited liability doctrine, which, the CA held, was shown (1) through the inclusion of the said subject Antipolo properties in the list submitted to the SEC; and (2) by Samuel, through the guarantees that he executed, thus voluntarily binding himself to the payment of the loans incurred from Bangkok Bank.

The CA also rejected petitioners' claim that the subject properties were allotted to Asiatrust. It reasoned that if the subject properties were indeed allotted to Asiatrust, then these would not have been included in the list of properties submitted

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[31] *Id.* at 89-90.

[32] *Id.* at 84.

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to the SEC. It added that the absence of any encumbrance annotated on the TCTs or any document appurtenant to it prior to the January 30, 1998 writ of preliminary attachment issued in Civil Case No. 98-196 and the February 20, 1998 Suspension Order further belies petitioners' claim. The CA held that fraud was perpetrated through the REM executed and registered on February 23, 1998 pursuant to the presumption in the second paragraph of Art. 1387 of the Civil Code, which provides that "alienations by onerous title are also presumed fraudulent when made by persons against whom x x x some writ of attachment has been issued." Consequently, the spouses Lee filed the instant petition.

The Issues

I.

Whether or not Bangkok Bank can maintain an action to rescind the REM on the subject Antipolo properties despite its failure to exhaust all legal remedies to satisfy its claim.

II.

Whether or not properties owned by private individuals should be covered by a suspension order issued by the SEC in an action for suspension of payments.

III.

Whether or not a surety or guarantor is guilty of defrauding creditors for executing a REM in favor of one creditor prior to the filing of a Petition for Suspension of Payments.[33]

The Court's Ruling

The core issue is whether the February 23, 1998 REM executed over the subject Antipolo properties and the April 15, 1998 foreclosure sale were committed in fraud of petitioners' other creditors, and, as a consequence of such fraud, the questioned mortgage could, therefore, be rescinded. Petitioners allege that no fraud exists.

The petition is meritorious.

[33] *Id.* at 12-13.

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Prevailing and applicable SEC laws

At the outset, it must be noted that at the time the Consolidated Petition for the Declaration of a State of Suspension of Payments and for Appointment of a Management Committee/Rehabilitation Receiver was filed before the SEC on February 16, 1998 by MDEC, MHI, and three other corporations owned by the Lee family, *Batas Pambansa Blg.* (BP) 178 or the then Revised Securities Act was the primary governing law along with Presidential Decree No. (PD) 902-A, as amended, and the Corporation Code of the Philippines. Pertinently, among others, the SEC was also covered by the Investment House Law (PD 129), the Financing Company Act under Republic Act. No. (RA) 2626, the Foreign Investments Act (RA 7042), and the Liberalized Foreign Investments Act (RA 8179). And subsequent to the filing of the instant case, the Securitization Act of 2004 (RA 9267) and the Lending Company Regularization Act of 2007 (RA 9474) were also enacted.

PD 902-A,[34] however, was further amended by RA 8799 or the Securities Regulation Code, approved on July 19, 2000 by President Joseph Estrada.[35] Under Sec. 5.2 of RA 8799,[36] the SEC's original and exclusive jurisdiction over all cases enumerated

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[34] Reorganization of the Securities and Exchange Commission with Additional Power and Placing the Said Agency under the Administrative Supervision of the Office of the President (March 11, 1976).

[35] It became effective on August 8, 2000, 15 days after its publication on July 24, 2000 in a newspaper of general circulation.

[36] Sec. 5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided,* That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over the cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payment/rehabilitation cases filed as of 30 June 2000 until finally disposed.

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under Sec. 5 of PD 902-A[37] was transferred to the appropriate RTC. RA 8799, Sec. 5.2, however, expressly stated as an exception, that the "**[t]he Commission shall retain jurisdiction over pending suspension of payment/rehabilitation cases filed as of 30 June 2000 until finally disposed**." Accordingly, the Consolidated Petition for the Declaration of a State of Suspension of Payments and for Appointment of a Management Committee/Rehabilitation Receiver filed on February 16, 1998 by MDEC, MHI and three other corporations owned by the Lee family, remained under the jurisdiction of the SEC until finally disposed of pursuant to the last sentence of Sec. 5.2 of RA 8799.

The subject properties are not under the purview of the SEC Suspension Order

Pivotal to the resolution of the instant case is whether the subject properties owned by the spouses Lee were subject to the February 20, 1998 SEC Suspension Order. On the one hand, the CA held and found these to be subject to the Suspension Order. The RTC, on the other hand, found contrariwise in that the assailed REM and foreclosure sale did not violate the SEC Suspension Order.

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[37] Section 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, members of associations or organizations registered with the Commission.

b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;

c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

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A review of the applicable laws and existing jurisprudence would show that the subject properties owned by the spouses Lee were not subject to the February 20, 1998 SEC Suspension Order.

PD 902-A vested the SEC with jurisdiction on petitions for suspension of payments only on corporations, partnerships and associations; not on individual persons

The SEC's jurisdiction is evident from the statutorily vested power of jurisdiction, supervision and control by the SEC over all corporations, partnerships or associations, which are grantees of primary franchise, license or permit issued by the government to operate in the Philippines, and its then original and exclusive jurisdiction over petitions for suspension of payments of said entities. Secs. 3 and 5 of PD 902-A pertinently provides, thus:

> Sec. 3. The Commission shall have absolute jurisdiction, supervision and control over all **corporations, partnerships or associations**, who are the grantees of primary franchise and/or a license or permit issued by the government to operate in the Philippines; and in the exercise of its authority, it shall have the power to enlist the aid and support of any and all enforcement agencies of the government, civil or military.
>
> Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall **have original and exclusive jurisdiction to hear and decide cases involving:**
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> x x x x x x x x x
>
> (d) **Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due** or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree. (Emphasis Ours.)

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It can be clearly gleaned from the above provisions that in cases of petitions for the suspension of payments, the SEC has jurisdiction over corporations, partnerships and associations, which are grantees of primary franchise or license or permit issued by the government to operate in the Philippines, and their properties. And it is indubitably clear from the aforequoted Sec. 5(d) that only **corporations, partnerships and associations** —NOT private individuals—can file with the SEC, petitions for declaration in a state of suspension of payments. Thus, it logically follows that the SEC does not have jurisdiction to entertain petitions for suspension of payments filed by parties other than **corporations, partnerships or associations**. Indeed, settled is the rule that it is axiomatic that jurisdiction is the authority to hear and determine a cause, which is conferred by law and not by the policy of any court or agency.[38]

Private individuals and their privately owned properties cannot be placed under the jurisdiction of the SEC in a petition for suspension of payments

In *Chung Ka Bio v. Intermediate Appellate Court*,[39] this Court resolved in the negative the issue of whether private individuals can file with the SEC petitions for declaration in a state of suspension of payments. We held that Sec. 5(d) of PD 902-A clearly does not allow a mere individual to file the petition, which is limited to "corporations, partnerships or associations." Besides, We pointed out that the SEC, being a mere administrative agency, is a tribunal of limited jurisdiction and, as such, can only exercise those powers, which are specifically granted to them by their enabling statutes. We, thus, concluded that where no authority is granted to hear petitions of individuals for suspension of payments, such petitions are beyond the competence of the SEC. In short, the SEC has no jurisdiction over private individuals relative to any petition for suspension of payments, whether the private individual is a petitioner or a

[38] *Cayabyab v. De Aquino*, G.R. No. 159974, September 5, 2007, 532 SCRA 353; *Heirs of Florencio Adolfo v. Cabral*, G.R. No. 164934, August 14, 2007, 530 SCRA 111.

[39] G.R. No. 71837, July 26, 1988, 163 SCRA 534.

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co-petitioner. We have said time and again that the SEC's "jurisdiction is limited only to corporations and corporate assets"; it has no jurisdiction over the properties of private individuals or natural persons, even if they are the corporation's officers or sureties.[40] We have, thus, consistently applied this ruling to the subsequent *Ong v. Philippine Commercial International Bank*,[41] *Modern Paper Products, Inc. v. Court of Appeals*,[42] and *Union Bank of the Philippines v. Court of Appeals*.[43]

Here, it is undisputed that the petition for suspension of payments was collectively filed by the five corporations owned by the Lee family. It is likewise undisputed that together with the consolidated petition is a list of properties, which included the subject Antipolo properties owned by Samuel and Pauline Lee. The fact, however, that the subject properties were included in the list submitted to the SEC does not confer jurisdiction on the SEC over such properties. It is apparent that even if the members of the Lee family are joined as co-petitioners with the five corporations, still, this could not confer jurisdiction on the SEC over the Lee family members—as private individuals—nor could this affect their privately owned properties.

Further, the fact that the debts of MDEC and MHI to Bangkok Bank are secured by the Lee family through the guarantees will not likewise put the Lee family and their privately owned properties under the jurisdiction of the SEC through the consolidated petition for suspension of payments.

Therefore, the February 20, 1998 Suspension Order issued by the SEC did not and could not have included the subject properties. The RTC correctly grasped this point that the disposition of the subject properties did not violate the suspension order.

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[40] *Ong v. Philippine Commercial International Bank*, G.R. No. 160466, January 17, 2005, 448 SCRA 705, 710.

[41] *Id.*

[42] G.R. No. 127166, March 2, 1998, 286 SCRA 749.

[43] G.R. No. 131729, May 19, 1998, 290 SCRA 198.

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Bangkok Bank cannot take both opposing stances

Certainly, Bangkok Bank cannot take opposite positions at the same time. On the one hand, it instituted Civil Case No. 98-628 before the RTC, Branch 141 in Makati City on March 12, 1998—almost a month after the filing of the consolidated petition before the SEC and the issuance of the February 20, 1998 Suspension Order in order to recover the loans extended to MDEC and MHI under the guarantees. In it, Bangkok Bank contended that the subject lots were not part of the properties under the jurisdiction of the SEC in the case for suspension of payments. But, on the other hand, Bangkok Bank claims that the Antipolo properties are subject to the February 20, 1998 SEC Suspension Order, and, therefore, cannot be mortgaged by the spouses Lee to Asiatrust. By saying that the subject Antipolo properties are not under the jurisdiction of the SEC that is hearing the consolidated petition for suspension of payments, it necessarily follows that the same properties could not be subject to the SEC Suspension Order. This admission is also very clear in the statement made by Bangkok Bank's sole witness, Susan Capalaran:[44]

> Q: In other words, by your filing of an action in Makati on March 12, 1998, you are in effect saying that the properties owned by the individual stockholders are not covered by the Suspension Order of the Securities and Exchange Commission?
>
> Susan Capalaran: Yes.

The allegations of fraud in the instant petition

At the heart of the present controversy is the allegation of fraud by Bangkok Bank against the spouses Lee and Asiatrust. It is in this regard that the issue of fraud shall be examined here in detail. Preliminary matters, such as the applicable laws and their interpretation, shall first be explained. And subsequently, in order to fully appreciate the allegations of fraud by Bangkok

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[44] *Rollo*, p. 16; TSN, November 27, 2000, p. 21.

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Bank, they shall be discussed in three parts: (1) the existence of fraud on the part of the spouses Lee; (2) the existence of fraud on the part of Asiatrust; and separately, (3) the existence of collusion on the part of the spouses Lee and Asiatrust. It is imperative to expound on these points separately in order to illustrate that the mere existence of fraud on the part of one party, *i.e.*, the spouses Lee (against whom some judgment or some writ of attachment has been issued),[45] does not necessarily result in the rescission of a supposed alienation, if there is any.

The presumption of fraud under Art. 1387 of the Civil Code does not apply in the present case

Under Art. 1381(3) of the Civil Code, contracts, which were "undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them," are rescissible. Art. 1387 of the Code states when an act is presumed to be fraudulent, thus:

> Art. 1387. All contracts by virtue of which the debtor alienates property by gratuitous title are presumed to have been entered in fraud of creditors, when the donor did not reserve sufficient property to pay all debts contracted before the donation.
>
> Alienations by onerous title are also presumed fraudulent when made by persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued. The decision or attachment need not refer to the property alienated, and need not have been obtained by the party seeking the rescission.
>
> In addition to these presumptions, the design to defraud creditors may be proved in any other manner recognized by the law of evidence.

It is with regard to the foregoing provisions that the CA anchored its ruling of the existence of a presumption of fraud in the instant case. This presumption, however, finds no application to this case.

The presumption of fraud established under Art. 1387 does not apply to registered lands IF "the **judgment or attachment**

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[45] *See* CIVIL CODE, Art. 1387(2).

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made is not also registered."[46] In *Abaya v. Enriquez*,[47] Abaya was able to obtain a judgment against Enriquez for a sum of money, and the judgment was partially unsatisfied after Enriquez made a partial payment. The judgment and the writ of execution, however, was never annotated on the titles of the registered lands owned by Enriquez.[48] Subsequently, Enriquez sold the said lands. In an action for rescission instituted by Abaya, the Court ruled that the presumption of fraud does not apply as the judgment and the attachment have not been registered and annotated on the title.[49] The Court held:

> Where the judgment rendered against the defendant x x x has not been entered in the records of the register of deeds, relative to an immovable belonging to the judgment debtor, the subsequent sale of said property by the latter, shall not be rescinded upon the ground of fraud, unless the complicity of the buyer in the fraud imputed to said vendor is established by other means than the presumption of fraud x x x.[50]

In this case, prior to the annotation of the REM on February 23, 1998, SBC was able to successfully acquire a writ of preliminary attachment in its favor against the spouses Lee on January 30, 1998 in a case for a sum of money for nonpayment of its obligation. Bangkok Bank alleges that because of this, the presumption of fraud under Art. 1387 of the Civil Code applies. But while a judgment was made against the spouses Lee in favor of SBC on January 30, 1998, this, however, was not annotated on the titles of the subject properties. In fact, there is no showing that the judgment has ever been annotated on the titles of the subject properties. As established in the facts, there were only two annotations at the back of the titles of the Antipolo properties:

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[46] 4 E.L. Paras, *CIVIL CODE OF THE PHILIPPINES ANNOTATED* 740 (4th ed., 2000).

[47] 101 Phil. 1210 (1957).

[48] 4 E.L. Paras, *supra* note 46, at 740-41; citing *Abaya v. Enriquez, supra* note 47.

[49] *Id.* See also *Orsal v. Alisbo*, 106 Phil. 655, 660 (1959).

[50] *Abaya v. Enriquez, supra* note 47.

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first, the REM executed in favor of Asiatrust on February 23, 1998; and *second*, the writ of preliminary attachment in favor of Bangkok Bank on March 18, 1998. Considering that the earlier SBC judgment or attachment was not, and in fact never was, annotated on the titles of the subject Antipolo properties, prior to the execution of the REM, the presumption of fraud under Art. 1387 of the Code clearly cannot apply.

Even assuming that Art. 1387 of the Code applies, the execution of a mortgage is not contemplated within the meaning of alienation by onerous title under the said provision

Under Art. 1387 of the Code, fraud is presumed only in **alienations** by onerous title of a person against whom a judgment or attachment has been issued. The term, alienation, connotes the "transfer of the property and possession of lands, tenements, or other things, from one person to another."[51] This term is "particularly applied to **absolute conveyances** of real property" and must involve a "complete transfer from one person to another."[52] A mortgage does not contemplate a transfer or an absolute conveyance of a real property.[53] It is "an interest in land created by a written instrument providing security for the performance of a duty or the payment of a debt."[54] When a debtor mortgages his property, he "merely subjects it to a **lien** but **ownership thereof is not parted with**."[55] It is merely a lien that neither creates a title nor an estate.[56] It is, therefore, certainly not the alienation by onerous title that is contemplated in Art. 1387 where fraud is to be presumed.

In this very action, Bangkok Bank claims that when the spouses Lee executed the REM in favor of Asiatrust, the presumption

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[51] *BLACK'S LAW DICTIONARY* 72 (6th centennial ed.).

[52] *Id.* (Emphasis Ours.)

[53] H.S. De Leon, *COMMENTS AND CASES ON CREDIT TRANSACTIONS* 413-414 (2002).

[54] *BLACK'S LAW DICTIONARY, supra* note 51, at 1009.

[55] H.S. De Leon, *supra* note 53, at 415. (Emphasis Ours.)

[56] *BLACK'S LAW DICTIONARY, supra* note 51, at 1009-1010.

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of fraud under Art. 1387 became applicable. We hold in the negative. As We have plainly discussed, a mortgage is not that which is contemplated in the term "**alienation**" that would make the presumption of fraud under Art. 1387 apply. It requires a full and absolute conveyance or transfer of property from one person to another, such as that in the form of a sale. As elucidated earlier, a mortgage merely creates a lien on the property that would afford the mortgagee/creditor greater security in the obligation of the mortgagor/debtor. This being so, as the REM is not the alienation contemplated in Art. 1387 of the Code, the presumption of fraud cannot apply.

In any case, the application of the presumption of fraud under Art. 1387, if applicable, could only be made to apply to the spouses Lee as the person against whom a judgment or writ of attachment has been issued; not to Asiatrust

A careful reading of Art. 1387 of the Code *vis-à-vis* its Art. 1385 would plainly show that the presumption of fraud in case of alienations by onerous title only applies to the person who made such alienation, and against whom some judgment has been rendered in any instance or some writ of attachment has been issued. A third person is not and should not be automatically presumed to be in fraud or in collusion with the judgment debtor. In allowing rescission in case of an alienation by onerous title, the third person who received the property conveyed should likewise be a party to the fraud.[57] As clarified by Art. 1385(2) of the Code, so long as the person who is in legal possession of the property did not act in bad faith, rescission cannot take place. Thus, in all instances, as to the third person in legal possession of the questioned property, good faith is presumed. Accordingly, it is upon the person who alleges bad faith or fraud that rests the burden of proof.[58]

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[57] 4 A.M. Tolentino, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES* 576 & 589 (2002).

[58] *Balbuena v. Sabay*, G.R. No. 154720, September 4, 2009, 598 SCRA 215, 227; *Coastal Pacific Trading, Inc. v. Southern Rolling Mills, Co., Inc.*, G.R. No. 118692, July 28, 2006, 497 SCRA 11, 39.

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Asiatrust, being a third person in good faith, should not be automatically presumed to have acted fraudulently by the mere execution of the REM over the subject Antipolo properties, there being no evidence of fraud or bad faith. Regrettably, in ratiocinating that fraud was committed by both the spouses Lee and Asiatrust, the CA merely anchored its holding on the presumption espoused under Art. 1387 of the Code,[59] nothing more.

The alleged fraud on the part of the spouses Lee was not proved and substantiated

It appears that the argument of Bangkok Bank on the existence of fraud on the part of the spouses Lee[60] revolves around the application of the presumption of fraud under Art. 1387 of the Code.[61] Bangkok Bank failed to substantiate its allegations by presenting clear and convincing proof that the spouses Lee indeed committed fraud in mortgaging the subject properties to Asiatrust, and instead anchored its existence of the presumption under Art. 1387. This cannot stand before this Court.

On the contrary, the spouses Lee proved the absence of fraud on their part. During trial, the spouses Lee and Asiatrust were able to substantially establish that, indeed, a loan agreement has been existing between them since 1996 and that MDEC made use of it on several occasions in 1997. It has likewise been established that, as MDEC defaulted in its payment of the loan that matured in 1997, the parties began negotiations as to how MDEC could secure the loans. It was concluded in December 1997 upon Samuel's proposal that his Antipolo properties be used to secure MDEC's loans by means of a mortgage. This settlement has been agreed upon even before any action was filed against the Lee corporations in 1998. These facts have been established during trial without any controversy.

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[59] *Rollo,* pp. 10-11.

[60] As persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued under Art. 1387, paragraph 2 of the Civil Code.

[61] *Rollo,* pp. 19-21.

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No deception could have been used by the spouses Lee in including in the list of properties, which they submitted to the SEC, the subject Antipolo properties. *First*, it is undisputed that the list of properties submitted by the Lee corporations to the SEC clearly indicated that the subject Antipolo properties have already been earmarked, or have already been serving as security, for its loan obligations with Asiatrust. *Second*, MDEC, through its counsel, truly believed in good faith that the inclusion of the spouses Lee's private properties in the list submitted to the SEC is valid and regular. As can be seen in the letter sent by the counsel of the Midas Group of Companies to the Office of the Clerk of Court and *Ex-Officio* Sheriff of the Antipolo RTC on April 4, 1998, at the time when the subject Antipolo properties were being foreclosed by Asiatrust, its counsel vigorously countered the actions of Asiatrust and stated that the subject Antipolo properties cannot be foreclosed pursuant to the SEC Suspension Order.[62] And as discussed *infra*, the alleged collusion between the spouses Lee and Asiatrust appears to be a mere figment of imagination.

In any case, the facts show no presence of fraud on the part of Asiatrust; therefore, the REM was not a sham

Even pushing further to say that the REM was executed by the spouses Lee to defraud creditors, the REM cannot be rescinded and shall, therefore, stand, as Asiatrust—the third party, in favor of which the REM was executed, and which subsequently foreclosed the subject properties—acted in good faith and without any badge of fraud. As a general rule, whether the person, against whom a judgment was made or some writ of attachment was issued, acted **with or without fraud**, so long as the third person who is in legal possession of the property in question did not act with fraud and in bad faith, an action for rescission cannot prosper. Art. 1385 of the Civil Code explicitly states this, thus:

Art. 1385. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits,

[62] *Id.* at 6-9, 98.

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and the price with its interest; consequently, **it can be carried out only when he who demands rescission can return whatever he may be obliged to restore**.

Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith. (Emphasis Ours.)

As to who or which entity is in legal possession of a property, the registration in the Registry of Deeds of the subject property under the name of a third person indicates the legal possession of that person.[63] In this case, Asiatrust is in the legal possession of the subject Antipolo properties after the titles under the name of Spouses Lee have been canceled, and new TCTs have been issued on April 20, 1999, under the name of Asiatrust. What is more, 12 title out of the 120 titles in the Antipolo properties in question have already been sold to different persons, which make them in legal possession of the properties. It is, thus, established that Asiatrust and the 12 other unnamed persons are in legal possession of the subject Antipolo properties; and it is imperative to prove that they legally took possession of them in good faith and without any badge of fraud.

Now, as to whether Asiatrust acted with fraud or bad faith, Bangkok Bank failed to present any clear and convincing evidence that would ascertain its existence.

Contracts in fraud of creditors are those executed with the **intention** to prejudice the rights of creditors. They should not be confused with those entered into without such mal-intent, even if, as a direct consequence, a creditor may suffer some damage. More so it is, when the allegation involves not only fraud on the part of the debtor, but also that of another creditor. In determining whether or not a certain conveying contract is fraudulent, what comes to mind first is the question of whether the conveyance was a *bona fide* transaction or a trick and contrivance to defeat creditors.[64] Haste alone in the foreclosure

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[63] 4 E.L. Paras, *supra* note 46, at 731.

[64] 4 A.M. Tolentino, *supra* note 57, at 575-576.

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of the mortgage does not constitute the existence of fraud. Considering that the totality of circumstances clearly manifests the want of fraud and bad faith on the part of the parties to the REM in question, consequently, the REM cannot be rescinded.

In this case, it is clearly established that there was a *bona fide* transaction between the spouses Lee and Asiatrust that necessitated the negotiations resulting from the former's default in the payment of its obligations; and which brought about the execution of the REM to secure their pre-existing obligations. Particularly on the part of Asiatrust, the testimonies of Shirley Benedicto, its Vice-President, who was part of the bank's account management group tasked to ensure the proper management of loans from its inception up to its collection, and of Atty. Neriza San Juan, the bank's former Vice-President, and Head of its Credit Support Services and Legal Services Groups, amply proved the existence of good faith and dismissed the allegation of fraud. Asiatrust was able to establish (1) the existence of a loan agreement through a loan facility/credit line between Asiatrust and MDEC since July 25, 1996, which was guaranteed by the Lee family, including Samuel; (2) the advances made by MDEC throughout 1997, which amounted to an aggregate sum of PhP 31,000,000; (3) the default in payment of MDEC on its maturing loans; and (4) the negotiations, which took place between Asiatrust and Samuel on behalf of MDEC that led, in December 1997, to the agreement for Samuel to mortgage the subject Antipolo properties to secure the defaulting loan and the loans, which were yet to mature.[65] And as the last advances made by MDEC matured on February 20, 1998, it was just timely and appropriate for Asiatrust to foreclose the subject properties on April 15, 1998 in order to ensure that it is paid of the obligations, which MDEC owed to it. In this case, Asiatrust was left with only one clear and practicable means by which it could be paid of MDEC's obligations, *i.e.*, by foreclosing the mortgaged properties. After all, "[t]he only right of a mortgagee in case of non-payment of a debt secured by mortgage would be to foreclose the mortgage

[65] *Rollo*, pp. 97-99.

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and have the encumbered property sold to satisfy the outstanding indebtedness."[66]

Conversely, Asiatrust did not sleep on its rights as a mortgage creditor of MDEC by foreclosing the mortgage on the spouses Lee's Antipolo properties. On the contrary, it is odd but worth noting that Bangkok Bank never acted on its rights as creditor at the soonest possible time. It could have asserted it rights as creditor at the time when the Lee family's corporations started to default in their payments of the loans as early as October 1997.[67] When Bangkok Bank finally instituted an action against the Lee family on March 12, 1998 to collect the outstanding obligations of MDEC and MHI, a writ of preliminary attachment was issued by the Makati RTC in the same month covering the properties of the Lee family, including the subject Antipolo properties. And while enforcing the said writ, Bangkok Bank discovered the existing REM that had already been annotated on the titles of the subject Antipolo properties. But Bangkok Bank did nothing upon its knowledge and discovery. Worse, even at the time of the foreclosure and the redemption period, or until April 30, 1999, Bangkok Bank likewise did not act on the alleged fraudulent execution of the REM; nor did it redeem the subject properties. Rather, it was only on July 20, 1999 that Bangkok Bank seems to have belatedly realized that the subject Antipolo properties could properly be another means by which it could be paid of the defaulting obligations of MDEC and MHI. Interestingly, even on the elevation of this case to Us, Bangkok Bank's counsel had to move for four extensions, totaling to 52 days within which to file a comment on the instant petition, and has been warned for it.[68] Asiatrust cannot be faulted for acting with prudence, in good faith, and without any badge of fraud in the creation of the REM and in the foreclosure of the mortgage to ensure the satisfaction of the debts owed to it

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[66] H.S. De Leon, *supra* note 53, at 414; citing *Guanzon v. Argel*, G.R. No. L-27706, June 16, 1970, 33 SCRA 474.

[67] *Rollo*, p. 95.

[68] *Id.* at 134.

by MDEC. Bangkok Bank should have likewise done so at the earliest possible opportunity.

Furthermore, Asiatrust, in good faith, conducted the necessary diligence and meticulousness expected of it. During cross-examination, Atty. San Juan established that when the spouses Lee offered the subject Antipolo properties as collateral, Asiatrust had them appraised and required the spouses Lee to submit a photocopy of the titles, location map, and the relevant tax declarations, which was forwarded to its Appraisal Team. She further explained that credit investigation is a continuing annual process since the bank considers the market information in connection with the account of the borrower.[69] Indeed:

> The mortgagee has a right to rely in good faith on what appears on the certificate of title of the mortgagor to the property given as security and in the absence of anything to excite suspicion, he is under no obligation to look beyond the certificate and investigate the title of the mortgagor appearing on the fact of the certificate. Accordingly, the right or lien of an innocent mortgagee for value upon the mortgaged property must be respected and protected, even if the mortgagor obtained his title through fraud. The remedy of the persons prejudiced is to bring an action for damages against the person who caused the fraud x x x.[70]

There was no collusion between the spouses Lee and Asiatrust

Besides the fact that individually, fraud was not sufficiently and convincingly established on the part of the spouses Lee and Asiatrust, Bangkok Bank's allegation of collusion between them was likewise unsubstantiated and therefore untenable.

First, even after the subject Antipolo properties were foreclosed by Asiatrust, Asiatrust sought the recovery of the deficiency amounting to at least PhP 14,800,000. And until the filing of

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[69] *Id.* at 99.

[70] H.S. De Leon, *supra* note 53, at 411-412; citing *Cebu International Finance Corporation v. Court of Appeals*, G.R. No. 107554, February 13, 1997, 268 SCRA 178; and *Philippine National Bank v. Court of Appeals*, G.R. No. L-43972, July 24, 1990, 187 SCRA 735.

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the memoranda by the parties before this Court, the said action remains pending before the CA.[71]

Second, Asiatrust filed a criminal case against Samuel for violation of BP 22.[72] At the time of the filing of the petition for review, the case was still pending before the Metropolitan Trial Court of Quezon City.[73] Later, at the time of the filing of the spouses Lee's Memorandum, it was indicated that it has already been dismissed.

Third, contrary to the CA's appreciation of the facts,[74] the letter sent by Atty. Macam, counsel of the Midas Group of Companies, actually strengthens the proof that no collusion existed between the parties. Acting on the interest of MDEC, Atty. Macam sent a letter to the Clerk of Court and the *Ex-Officio* Sheriff of the Antipolo RTC, arguing that the subject Antipolo properties cannot be foreclosed as they are the subject of an existing SEC Suspension Order.[75] In fact, counsel for MDEC alleged that the foreclosure sale was illegal.[76] On the other hand, when the *Ex-Officio* Sheriff presented a copy of the letter to Asiatrust and asked the latter to comment, Asiatrust categorically stated that the subject properties could not be made a subject of the SEC Suspension Order, they being properties of the spouses Lee, natural persons outside the jurisdiction of the SEC.[77] In fact, it was Bangkok Bank's sole witness, Capalaran, who firmly agreed that, indeed, the subject properties are not covered by the Suspension Order that is why Bangkok Bank,

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[71] *Rollo*, p. 17; in *Asiatrust Bank v. Midas Diversified Export Corporation, Samuel U. Lee, et al.*, CA-G.R. CV No. 80862, Memorandum for Spouses Lee, p. 11.

[72] *People of the Philippines v. Samuel U. Lee*, Criminal Case Nos. 51833-35, Memorandum for Spouses Lee, p. 11.

[73] *Rollo*, p. 18.

[74] *Id.* at 84-87.

[75] *Id.* at 84-86.

[76] *Id.* at 86.

[77] *Id.* at 98-99.

too, filed an action against the spouses Lee on March 12, 1998 and sought the attachment of the said properties.[78]

With all the foregoing facts strongly established, We confirm the absence of fraud, bad faith, and collusion between the spouses Lee and Asiatrust.

The requisite (1) good faith on the part of the third person and (2) fraud, necessary for an action to rescind under Art. 1381 of the Civil Code, were not complied with

In *Siguan v. Lim*,[79] this Court held that in an action to rescind under Art. 1381, the following requisites must exist:

> The action to rescind contracts in fraud of creditors is known as *accion pauliana*. For this action to prosper, the following requisites must be present: (1) the plaintiff asking for rescission has a credit prior to the alienation, although demandable later; (2) the debtor has made a subsequent contract conveying a patrimonial benefit to a third person; (3) the creditor has no other legal remedy to satisfy his claim; **(4) the act being impugned is fraudulent; (5) the third person who received the property conveyed, if it is by onerous title, has been an accomplice in the fraud**. (Emphasis Ours; citations omitted.)

Considering the discussions previously expounded, the extant records show that the fourth and fifth requisites enumerated above are absent.

As between Asiatrust and Bangkok Bank, the former has a better right over the subject Antipolo properties, it being the first to annotate its lien on the titles of the properties

It is evidently a well-settled and elementary principle that the rights of the first mortgage creditor or mortgagee over the mortgaged properties are superior to those of a subsequent attaching creditor and other junior mortgagees.[80]

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[78] *Id.* at 16; TSN, November 27, 2000, p. 21.

[79] G.R. No. 134685, November 19, 1999, 318 SCRA 725, 735.

[80] *"G" Holdings, Inc. v. National Mines and Allied Workers Union Local 103*, G.R. No. 160236, October 16, 2009, 604 SCRA, 73, 104; *Cabral*

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In this case, it is a fact that the REM was annotated on the titles of the subject Antipolo properties ahead of the writs of preliminary attachment issued in favor of Bangkok Bank. In fact, it was admitted by Bangkok Bank that it only knew of the existing mortgage that has already been annotated at the back of the subject titles when it sought the annotation of the writs of preliminary attachment.[81] Therefore, as between Asiatrust as mortgage creditor and Bangkok Bank as attaching creditor, it is apparent that the former has a superior right over the latter.

Besides, "as between two persons who both stand to suffer loss, the possessor of the property should be preferred in that possession, the ownership having been transferred by delivery."[82] In this case, Asiatrust, being the entity with legal possession of the subject Antipolo properties, should be preferred in that possession. In addition, 12 of the titles in question have already been sold to 12 different persons, whose identities have not been introduced in the instant case and who have not been impleaded as parties. As these persons have been in legal possession of the said properties and are in good faith, their ownership and possession, should not be disturbed.

The redemption period has already lapsed

Sec. 27, Rule 39 of the Rules of Court states the persons who may redeem a real property sold, thus:

Sec. 27. Who may redeem real property so sold.

Real property sold as provided in the last preceding section, or any part thereof sold separately, may be redeemed in the manner hereinafter provided, by the following persons:

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v. Evangelista, 139 Phil. 300, 306-307 (1969); H.S. De Leon, *supra* note 53, at 414; citing *Rizal Commercial Banking Corporation v. Court of Appeals*, G.R. Nos. 128833-34, April 20, 1998, 289 SCRA 292; *Marcaida v. Pigtain*, 101 Phil. 1110, 1115-1116 (1957); *Benedicto v. F.M. Yap Tico & Co.*, 46 Phil. 753, 757 (1923).

[81] *Rollo*, p. 92.

[82] 4 A.M. Tolentino, *supra* note 57, at 589.

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(a) The judgment obligor, or his successor in interest in the whole or any part of the property;

(b) A **creditor having a lien by virtue of an attachment**, judgment or mortgage on the property sold, or on some part thereof, subsequent to the lien under which the property was sold. Such redeeming creditor is termed a redemptioner. (Emphasis Ours.)

From the foregoing rule, it is clear that Bangkok Bank, as an attaching creditor, has the right to redeem the subject Antipolo properties that were foreclosed by Asiatrust.[83]

In determining the period within which to redeem the foreclosed Antipolo properties in the present case, RA 337 or the *General Banking Act*[84] finds application. Pertinently, its Sec. 78 states:

Sec. 78. x x x In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan granted before the passage of this Act or under the provisions of this Act, the mortgagor or debtor whose real property has been sold at public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, banking, or credit institution, within the purview of this Act, shall have the right, **within one year after the sale of the real estate** as a result of the foreclosure of the respective mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, with interest thereon at the rate specified in the mortgage, and all the costs and other judicial expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property. However, the purchaser at the auction sale concerned shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. (Emphasis Ours.)

In this case, the auction sale took place on April 15, 1998 and was registered with the RD on April 21, 1998. Subsequently,

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[83] *Cayton v. Zeonnix Trading Corporation*, G.R. No. 169541, October 9, 2009, 603 SCRA 141, 151.

[84] An Act Regulating Banks and Banking Institutions and for Other Purposes (1948); cited in *Spouses Benedict and Maricel Dy Tecklo v. Rural Bank of Pamplona, Inc.*, G.R. No. 171201, June 18, 2010.

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on April 30, 1999, a date already and certainly beyond the one-year redemption period provided by law, new titles were issued in favor of Asiatrust.[85] Apparently, Bangkok Bank chose not to exercise its right of redemption over the subject Antipolo properties.

Even as a general rule, "[t]he period of redemption is not tolled by the filing of a complaint or petition for annulment of the mortgage and the foreclosure sale conducted pursuant to the said mortgage,"[86] Bangkok Bank, however, filed its action for rescission way beyond the expiration of the said redemption period on July 20, 1999. After the expiration of the redemption period, Asiatrust as purchaser, therefore, became the absolute owner of the subject properties, and whose rights necessarily include the right to be in the legal possession of the properties.[87]

As a final note, in ruling for Bangkok Bank, the CA strangely did not even delve upon any fact that could have ascertained the allegation of fraud from which Bangkok Bank based its arguments. Quite the opposite, the RTC discussed in detail the facts and testimonies presented by the parties, upon which its finding of the absence of fraud was based. Indeed, factual findings by the trial court are afforded great weight by this Court especially when supported by substantial evidence on record.[88]

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[85] *Rollo*, p. 93.

[86] *Heirs of Estelita Burgos-Lipat v. Heirs of Eugenio D. Trinidad*, G.R. No. 185644, March 2, 2010, 614 SCRA 94, 97-99; citing *Landrito, Jr. v. Court of Appeals*, G.R. No. 133079, August 9, 2005, 466 SCRA 107, 118.

[87] *Spouses Salvador F. De Vera and Feliza V. De Vera v. Agloro*, G.R. No. 155673, January 14, 2005, 448 SCRA 203, 213-14; 3 O.M. Herrera, *REMEDIAL LAW* 373 (1999); citing *Banco Filipino Savings and Mortgage Bank v. Intermediate Appellate Court*, G.R. No. 68878, April 8, 1986, 142 SCRA 44, 48.

[88] *Allied Banking Corporation v. South Pacific Sugar Corporation*, G.R. No. 163692, February 4, 2008, 543 SCRA 585, 595; *Valgosons Reality, Inc. v. Court of Appeals*, G.R. No. 126233, September 11, 1998, 295 SCRA 449, 461; citing *Tan Chun Suy v. CA*, G.R. No. 93640, January 7, 1994, 229 SCRA 151.

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While prejudice to Bangkok Bank ultimately resulted in the series of inopportune events that led to the present case, it cannot be denied that no clear, satisfactory and convincing evidence was presented to show fraud on the part of both the spouses Lee and Asiatrust. Nor was bad faith on the part of Asiatrust and the 12 other subsequent purchasers established. Accordingly, the REM annotated on the titles of the subject Antipolo properties and the subsequent foreclosure of the same properties cannot and should not be rescinded.

WHEREFORE, premises considered, the petition is hereby *GRANTED*. Accordingly, the CA's March 15, 2006 Decision and June 29, 2006 Resolution in CA-G.R. CV No. 79362 are *REVERSED* and *SET ASIDE*. The RTC's April 21, 2003 Decision in Civil Case No. 99-5388 is hereby *REINSTATED*.

No pronouncement as to costs.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perez, JJ.,* concur.